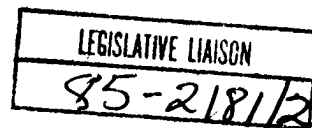




UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISIONOLL FILE GAO
Recpt # Record

JULY 12, 1985

B-219247

The Honorable Charles E. Bennett
Chairman, Subcommittee on Seapower and
Strategic and Critical Materials
Committee on Armed Services
House of Representatives

Dear Mr. Chairman:

Subject: Observations on Whether National Defense
Stockpile Transaction Fund Activities by the
Department of Energy and the General Services
Administration Comply with the Strategic and
Critical Materials Stock Piling Act
(GAO/NSIAD-85-122)

In your letter of April 22, 1985, and in subsequent discussions with your office, we were asked to investigate certain aspects of the Strategic and Critical Materials Stock Piling Act. Specifically, you asked us to determine whether (1) the Department of Energy (DOE) must make monthly transfers of 30 percent of net naval petroleum reserve receipts to the National Defense Stockpile Transaction Fund, pursuant to Section 905, Public Law 98-525, and (2) the General Services Administration (GSA) is correct in asserting that bartering stockpile materials for ferroalloys upgrading provides no receipts and, therefore, is not affected by the \$250 million Transaction Fund limitation specified in section 903 of that law. Your office also indicated interest in the status of Annual Materials Plans for 1985 and 1986. This report and our legal analysis (encl. I) are in response to your questions.

We found that shortly before the Transaction Fund's unobligated balance reached \$250 million--thus prohibiting further sales from the stockpile--GSA requested DOE to stop making monthly deposits to the Transaction Fund and instead keep the revenues in a suspense account. GSA has proposed legislation to repeal the provision that the revenue from the naval petroleum reserve be deposited in the Transaction Fund, and again allow it to be deposited in U.S. Treasury miscellaneous receipts, thus reducing the federal budget deficit.

(391547)

ON FILE GAO RELEASE INSTRUCTIONS APPLY

ON FILE GSA RELEASE INSTRUCTIONS APPLY

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We believe the following:

- GSA, through DOE, has apparently manipulated the flexibility inherent in section 905 for its own purposes rather than continue a reasonable frequency of transfers to the Fund. While a literal reading of both section 905 and its legislative history support the DOE and GSA action, it is not what we or the Congress would necessarily have adopted. If the Congress intends that periodic deposits should be made to the Transaction Fund, section 905 should be clarified. We suggest legislative changes to establish a specified schedule for transferring money to the Transaction Fund.
- Barter transactions are not precluded even if the \$250 million Transaction Fund ceiling is exceeded.
- GSA's decision to cease obligating funds appropriated for purchases in accordance with Annual Materials Plans is a deferral of budget authority.

BACKGROUND

The Congress established new National Defense Stockpile goals for strategic and critical materials in 1979 in order to minimize U.S. dependency upon foreign sources for supplies of such materials in times of national emergency. As of May 31, 1985, the stockpile contained \$10.1 billion of materials, such as bauxite and tin. Stockpile materials are bought, sold, or bartered as needed to ensure that adequate stocks are on hand. Moneys received from the sale of excess stockpile materials are deposited into the National Defense Stockpile Transaction Fund. These receipts are to remain in the Transaction Fund until appropriated by the Congress for the acquisition of other strategic and critical materials and for other expenses such as transportation of the materials.

The Strategic and Critical Materials Stock Piling Act, 50 U.S.C. 98 et seq., governs the stockpile, allowing for the acquisition and disposal of stockpile materials and requiring the development of an Annual Materials Plan to specify the quantities of materials to be bought or sold.

Public Law 98-525 (Department of Defense Authorization Act, 1985, 98 Stat. 2492), enacted October 19, 1984, amended the Stock Piling Act in two major ways.

- Section 905 of this law provides an additional source of funds for the purchase of needed materials by requiring that 30 percent of net revenues from naval petroleum

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reserve receipts for fiscal year 1985 be deposited into the National Defense Stockpile Transaction Fund.

--Section 903 of the law states that no disposal may be made from the stockpile if the disposal results in an unobligated Transaction Fund balance in excess of \$250 million (\$100 million effective October 1, 1986).

The agencies responsible for the material stockpile and, thus, affected by this law are the Federal Emergency Management Agency (FEMA), GSA, and DOE. FEMA is responsible for planning, programming, and reporting on the stockpile. GSA is responsible for administering the National Defense Stockpile and the Transaction Fund. DOE is responsible for collecting naval petroleum reserve receipts and depositing them into the Transaction Fund.

STATUS OF THE NATIONAL DEFENSE STOCKPILE TRANSACTION FUND

GSA reported a \$210.1 million unobligated balance in the Transaction Fund as of May 31, 1985. This balance included monthly deposits of \$96.1 million in naval petroleum reserve receipts through January 1985, but did not include \$105.1 million in such revenues that have been retained in a DOE suspense account since February 1985. As of May 31, 1985, only \$9.2 million had been disbursed from the Transaction Fund during fiscal year 1985 for the purchase of materials; the last purchase was on January 14, 1985. However, deposits to the Transaction Fund from sales of excess materials were continuing up to the conclusion of our field work in June 1985. GSA projections show that, if DOE had continued to make deposits from naval petroleum reserve receipts and no further stockpile purchases were made, the Transaction Fund would contain about \$411.5 million by the end of fiscal year 1985.

GSA and DOE activities pertaining to the deposit of naval petroleum reserve revenues

In December 1984, DOE and GSA agreed that DOE, in accordance with Public Law 98-525, would deposit 30 percent of the net revenues from naval petroleum reserve receipts into GSA's Transaction Fund on a monthly basis. According to GSA records, by February 8, 1985, DOE deposited \$96.1 million to the Transaction Fund for revenues through January 1985. However, since then, at the request of GSA, DOE has not deposited any further petroleum receipts to the Transaction Fund. In a March 7, 1985, letter to DOE, GSA's Comptroller requested that the petroleum revenues scheduled for deposit to the Transaction Fund be retained in DOE's suspense account. According to DOE records,

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DOE deposited \$29.5 million in the suspense account in February and \$25.2 million each in March, April, and May 1985. As a result, the suspense account balance as of May 31, 1985, was \$105.1 million.

GSA's reasons for requesting that
DOE stop deposits of petroleum
receipts into the Transaction Fund

GSA officials stated that the reason GSA asked DOE to retain petroleum reserve receipts in a suspense account was the Administration's desire to have the Congress repeal the requirement to deposit such receipts to the Transaction Fund. Before the passage of Public Law 98-525, all naval petroleum reserve receipts had been deposited in the U.S. Treasury as miscellaneous receipts, thereby reducing the deficit. On May 6, 1985, GSA's Acting Administrator forwarded a draft bill to the Speaker of the House, proposing to repeal the legal requirement to deposit 30 percent of naval petroleum reserve receipts in the Transaction Fund. However, GSA officials stated that all designated receipts currently being held in the suspense fund will be deposited to the Transaction Fund at the end of fiscal year 1985 if the law has not been repealed.

GSA officials also noted that, if deposits had continued into the Transaction Fund, its unobligated balance would have reached the \$250 million maximum during March 1985, thus precluding further disposal sales of excess materials from the National Defense Stockpile. In April and May 1985, GSA received \$4.6 million from disposals.

GAO legal analysis

We believe that, as the law now reads, DOE Transaction Fund activities are permissible. Section 905 of the law does not specify when transfers of naval petroleum reserve receipts must be made. DOE thus has substantial flexibility to determine when the transfers shall occur and is not required to make monthly transfers; that is, DOE can make a single transfer to the Transaction Fund of the net fiscal year 1985 receipts on or shortly after September 30, 1985, when petroleum reserve receipts and expenses are fully known, rather than at earlier, more frequent intervals. A single transfer at such time effectively delays whatever impact the petroleum reserve money presently held in DOE's suspense account would have on the Transaction Fund's unobligated balance. As pointed out by GSA, however, material sales such as the \$4.6 million made in April and May 1985 would have been prohibited if the reserve transfers had continued to be made on the monthly schedule.

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We believe that GSA, through DOE, apparently manipulated the flexibility inherent in section 905 for its own purposes rather than continue a reasonable frequency of transfers to the Fund. By requesting that DOE terminate monthly transfers, GSA could still make stockpile disposals because the change ensured that the \$250 million Transaction Fund ceiling would not be reached. While a literal reading of section 905 and its legislative history support the GSA and DOE action, it is not what we or the Congress would necessarily have adopted. Our legal analysis and suggested legislative changes that would establish a schedule for transferring money to the Transaction Fund are contained in enclosure I.

FERROALLOYS UPGRADING PROGRAM TRANSACTIONS

Under the ferroalloys upgrading program, GSA gives stockpile materials in exchange for having metal ores in the stockpile upgraded toward high-carbon ferroalloys, which are used in the production of steel. Because a bartering transaction does not involve cash receipts, it has no impact on the Transaction Fund's unobligated balance. Consequently, we agree with GSA that bartering can continue even if the Transaction Fund's unobligated balance exceeds \$250 million (see encl. I).

EFFECT OF ANNUAL MATERIALS PLANS ON THE STATUS OF STOCKPILE TRANSACTIONS

Stockpile acquisitions and disposals are made in accordance with an Annual Materials Plan, which is an annual list of acquisition and disposal actions for stockpile materials. In developing the plan, FEMA provides goals and priorities to GSA, which evaluates market outlook and proposes materials to be acquired or disposed of. An interagency steering committee¹ considers recommendations by two of its subcommittees and develops a recommended Annual Materials Plan. The plan is submitted to the Director of FEMA for approval, who then submits it to the National Security Council (NSC) for review. The plan is then submitted to the House and Senate Armed Services Committees.

¹Designated members of the steering committee include representatives of the GSA, FEMA, NSC, Office of Management and Budget, and Central Intelligence Agency; and of the Departments of Agriculture, State, Commerce, Defense, Energy, the Interior, and the Treasury. The Strategic Implications Subcommittee is chaired by the Department of Defense, and the Market and International Political Impacts Subcommittee is co-chaired by the Departments of Commerce and State.

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FEMA documents show that the Annual Materials Plan for 1985 was transmitted to the Committees on February 4, 1984. FEMA officials stated that the plan could be used by GSA as a basis for stockpile transactions beginning October 1, 1984. The Stock Piling Act also requires that significant changes or new transactions which would modify the plan be reported to the Armed Services Committees in advance. FEMA transmitted a revised disposal schedule to the Committees on April 1, 1985, thus revising the Annual Materials Plan.

FEMA officials advised us that the steering committee discussed the plan for fiscal year 1986 in December 1984, and that FEMA distributed a draft plan to GSA and other interagency steering committee members in January 1985. However, on February 19, 1985, FEMA notified the Armed Services Committees that the fiscal year 1986 Annual Materials Plan was being deferred until new Administration goals for the stockpile are established.

On July 8, 1985, the Administration announced the President's decision to modify stockpile goals based on an interagency study. As of July 10, 1985, FEMA officials said that they were aware of the announcement, but that they were awaiting policy guidance and did not know when new stockpile goals would be incorporated into the 1986 plan.

GSA has made no purchases for the stockpile since January 14, 1985. GSA officials told us that their reason was that they had been directed by the NSC to stop all acquisitions for the stockpile. Also, GSA officials stated that they had not received an official approved copy of the revised 1985 Annual Materials Plan for acquisitions.

We did not find corroborative evidence for GSA's statement that NSC directed stopping all acquisitions. The NSC letter cited by GSA did not direct GSA to stop purchases for the stockpile but simply concurred with GSA's recommendation to stop acquisitions. Regardless of whether GSA or NSC initiated stopping acquisitions, we believe that GSA has adequate authority to obligate funds under the Annual Materials Plan for 1985. GSA could use the original 1985 Annual Materials Plan, which was submitted to the Armed Services Committees on February 4, 1984, as a basis for needed acquisitions which are reflected in that plan.

Although GSA has the authority to obligate \$224 million from the Transaction Fund for the purchase of material (\$185 million authorized for fiscal year 1985, and \$39 million carried over from fiscal year 1984), it has not obligated any of these funds for the purchase of stockpile materials since January 1985.

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Also, the Transaction Fund, with the receipt transfers already made this fiscal year, had an unobligated balance of \$210.1 million as of May 31, 1985, and therefore is presently fully capable of supporting the acquisitions reflected in the Annual Materials Plans for 1984 and 1985 without additional transfers of receipts being needed. Accordingly, the delay in making transfers does not presently prevent acquisitions.

We believe that GSA's decision not to obligate funds under existing authority constitutes a deferral of budget authority, and have reported the deferral to the Congress as required by law (GAO/OGC-85-12, June 24, 1985, included as encl. II).

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our review was to respond to questions raised by the Chairman, Subcommittee on Seapower and Strategic and Critical Materials, House Committee on Armed Services (see p. 1).

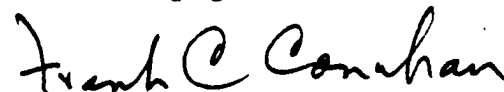
Our review was conducted in accordance with generally accepted government auditing standards. Our review was conducted during May and June 1985 at GSA, DOE, and FEMA headquarters. At GSA and DOE, we met with officials to (1) discuss the status of Transaction Fund activities, (2) review related documentation, and (3) obtain their reasoning for actions taken. At GSA, we also obtained documentation on exchange agreements under the ferroalloys program. At FEMA, we met with officials to discuss FEMA's role in stockpile and Transaction Fund activities, and obtained information on the status of Annual Materials Plans for fiscal years 1985 and 1986.

As requested by your office, we did not request GSA, DOE, or FEMA to review and comment officially on a draft of this report.

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Copies of this report are being sent to the Chairmen of the Senate and House Committees on Armed Services and Appropriations, the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Committee on Government Operations, and members of the stockpile steering committee.

Sincerely yours,



Frank C. Conahan
Director

Enclosures

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ANALYSIS OF DOE AND GSA TRANSACTION FUND
ACTIVITIES' COMPLIANCE WITH PUBLIC LAW 98-525

I. DIGESTS:

1. Department of Energy (DOE), at request of General Services Administration (GSA), has authority to temporarily stop monthly transfers of 30 percent of net receipts from Naval Petroleum Reserves to GSA's National Defense Stockpile Transaction Fund since transfer authority, section 905, Department of Defense Authorization Act, 1985, Pub. L No. 98-525, 98 Stat. 2573, does not specify when during fiscal year receipts must be transferred. As long as transfers are eventually made during fiscal year DOE can determine exact timing of any transfer within the year.
2. Limitation on disposals of national stockpile materials when unobligated balance in National Defense Stockpile Transaction Fund exceeds \$250 million is not applicable when General Services Administration barter stockpile material since barter in kind, not involving any cash receipts for deposit in Fund, do not affect Fund's unobligated balance.

II. BACKGROUND:

Public Law No. 98-525, §903, 98 Stat. 2573, the Department of Defense Authorization Act, 1985, amended the Strategic and Critical Materials Stock Piling Act, 50 U.S.C. §98 et seq., so that §5(b)(2), 50 U.S.C. §98d(b)(2), now reads:

"Except for disposals made under the authority of paragraph (4) or (5) of section 98e(a) of this title or under 98f(a) of this title, no disposal shall be made from the stockpile * * * (2) if the disposal would result in there being an unobligated balance in the National

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Defense Stockpile Transaction Fund in excess of \$250,000,000."^{1/}

Section 905 of the 1985 DOD Authorization Act, Pub. L. 98-525, 98 Stat. 2574, also provides that:

"There shall be deposited into the National Defense Stockpile Transaction Fund established under section 9 of the Act [50 U.S.C. §98h] 30 percent of all money accruing to the United States during fiscal year 1985 from lands in the naval petroleum and oil shale reserves (less amounts spent for exploration, development and operation of those reserves and related expenses during that period). Money deposited into the Fund under this subsection shall be deemed to have been covered into the Fund under section 9(b) of the Act."

The legislative history of these provisions is limited. The House conference report, H. Conf. Rep. No 98-1080 at 308, notes that the unobligated balance limitation originated in the House while the funding of the National Defense Stockpile Transaction Fund (Fund) with revenues from the Naval Petroleum Reserve (NPR) originated in the Senate.

The Senate Committee on Armed Services developed the transfer of funds provision "out of concern for the status of the National Defense Stockpile" in view of the first request in 20 years for authority to make purchases and the inherent limitation on purchases when funding comes solely from sales of excess stockpile materials. S. Rep. No. 98-500 at 262 (1984). As indicated by the Senate Committee Report, the

^{1/} 50 U.S.C. §98e(a)(4) authorizes the rotation of stockpile material to prevent deterioration; §98e(a)(5) authorizes the disposal of excess materials that may cause a loss to the Government if allowed to deteriorate; and §98f(a) authorizes the disposition of stockpile material when the President determines that disposition is required for national defense, and in time of war or national emergency.

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transfer of funds provision was designed to provide an additional source of income with which to make the Fund's expected purchases.

"The committee's decision on 30 percent of the Naval Petroleum Reserves receipts in excess of operating expenses is neither arbitrary nor permanent; purchases for the stockpile during fiscal year 1985 using the anticipated revenues from sales of excess materials under current disposal authority, plus the revenues from the Naval Petroleum Reserves receipts designated for deposit in the Stockpile Transaction Fund during fiscal year 1985 by this section, are consistent with the level of purchases presently authorized for the National Defense Stockpile."

(Emphasis added.) S. Rep. No.98-500 at 262 (1984).

House Report No. 98-691 at 269, states that the limitation on the amount of the Fund's unobligated balance (\$25 million in the House bill) was intended

"to encourage the prompt purchase of needed stockpile material with proceeds from disposals. To the extent possible, the committee intends that the Executive Branch balance purchases with sales."

Public Law No. 98-525 was enacted on October 19, 1984. Thereafter, we understand that the Department of Energy (DOE) transferred to the Fund four monthly installments of approximately \$96 million representing 30 percent of the net revenues from the NPR to that time.^{2/} Subsequent payments were, at the behest of the General Services Administration (GSA),

^{2/} The October and November 1984 installments were transferred on December 19, 1984; the December, 1984 installment on January 9, 1985; and the January, 1985 installment on February 8, 1985. Subsequent transfers were not made.

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retained by DOE in a DOE suspense account.^{3/} Retention of the NPR receipts in the suspense fund was ostensibly to obtain consistency between the transfer requirement of section 905, and the Administration's legislative proposal to repeal the transfer requirement as of the date of enactment of Pub. L. No. 98-525.^{4/} Even though no transfers have been made since February 1985, the Fund's unobligated balance is sufficient to support the acquisitions reflected in the Annual Materials Plans for fiscal years 1984 and 1985. Accordingly, the delay in making transfers does not presently prevent acquisitions.

III. DISCUSSION:

A.

MUST THE DOE MAKE MONTHLY TRANSFERS TO THE FUND OF 30 PERCENT OF THE NET NPR RECEIPTS?

Section 905 does not state specifically when 30 percent of the NPR receipts (net of certain expenses) must be transferred by DOE to GSA. In the absence of statutory direction, DOE, in consultation with GSA, has substantial discretion to determine the frequency of transfers. It is the exercise of that discretion and the reasons that support it that concerns us here.

DOE and GSA originally negotiated a monthly accounting and transfer of net NPR receipts, and transfers were in fact made on that basis. Nothing in the record before us indicates that monthly transfers to the Fund were abandoned because they were found to be infeasible or an unreasonable implementation of §905. Indeed, we think that transfers from the DOE suspense account to the Fund on a monthly basis were an eminently reasonable implementation of §905.

^{3/} DOE had previously established this suspense account as a temporary repository for amounts due GSA to assure that 30 percent of DOE's monthly collections from the NPR would be deposited in the Fund. Point Paper from GSA Comptroller to the Acting Administrator, GSA, May 4, 1985.

^{4/} Letter from R. Fontaine, Comptroller to Controller, DOE dated March 7, 1985.

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DOE stopped the monthly transfers to the Fund at GSA's request, ostensibly because of the need to obtain consistency between §905 and the Administration's proposed legislation to repeal that section. The retention of funds in the DOE suspense account pending the outcome of the Administration's repeal proposal delays the Fund's receipt of money that currently could be transferred. This action temporarily accomplishes in the present, without congressional action, what the proposed repeal legislation is designed to accomplish when and if enacted at some future time. Also, the continuing need to retain funds appears doubtful since the repealer seems to have little chance of passing.^{5/}

In sum, GSA, through DOE, has apparently manipulated the flexibility inherent in section 905 for its own purposes rather than continue a reasonable frequency of transfers to the Fund. Nevertheless, as shown below, a literal reading of both section 905 and its legislative history support the DOE and GSA action although it is not what we or Congress would necessarily have adopted.

Section 905 confers on DOE substantial discretion to determine the frequency of transfers, but that discretion is not unlimited. DOE must ultimately make the transfer no later than such point in time when all NPR receipts accruing during fiscal year 1985 and all the expenses to be netted against those receipts are known, i.e., at the end of fiscal year 1985 or shortly thereafter.^{6/} Within this constraint; however, more frequent transfers are permissible and, as previously

^{5/} Both Senate and House Armed Services Committees would continue the requirements of the section to fiscal year 1986. House Rept. No. 99-81, at 307; S. Rep. No. 99-41, at 219, both 99th Cong., 1st Sess.

^{6/} Strictly speaking § 905 does not even dictate the timing of this transfer. Theoretically, expenses could be netted against receipts at the end of the fiscal year and then held indefinitely by DOE. Since such a withholding effectively nullifies § 905, we opt for a reading of the section that places an outside time limit on the ability of DOE to not transfer the net NPR receipts.

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discussed, DOE and GSA did agree at one point to monthly transfers.^{7/}

The view that transfers can be postponed to year's end is compatible with the limited legislative history that exists. The transfer provision originated in the Senate as a means of ensuring that the Fund would have adequate money to support stockpile purchases during 1985 consistent with the level of purchases then authorized. The Senate also did not want to have to rely entirely on stockpile disposals to generate receipts for those purchases.

The Senate report does seem to emphasize that purchases were anticipated "during fiscal year 1985" and that NPR receipts were "designated for deposit" to the Fund "during" fiscal year 1985. Although "during FY 1985" certainly connotes an event within a specified time frame, such phrase does not answer the more relevant question of when during that time frame the event(s) must occur. Whenever else that event might occur during fiscal 1985, it is equally arguable to say that the event might occur during the very last months, days, or moments of fiscal year 1985.^{8/}

^{7/} GSA's Point Paper (footnote 3) states that a monthly transfer was agreed to, even though less frequent transfers were allowed under section 905, because DOE receives "NPR receipts monthly." This may be factually inaccurate since we are informally advised that DOE receives NPR receipts daily. DOE may, however, transfer net NPR receipts to miscellaneous receipts on a monthly basis. The discrepancy, if it exists, does not affect our conclusions.

^{8/} A transfer to the Fund made very late in the fiscal year could represent almost all the receipts accruing to the NPR during 1985. Expenses to be netted against receipts might not be fully known at that time and an adjustment might well be necessary early in the next fiscal year. However, this would be true of any transfer representing NPR receipts accruing to the United States in the waning days of FY 1985, irrespective of the number of prior transfers.

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Acceptance of "during" as allowing a transfer at year's end means that no transfer is necessarily required before that time. This in turn diminishes the importance of the DOE-GSA action of establishing and then terminating monthly transfers since these agencies were neither required to start transfers at such frequency or continue them. Consequently, while our view that monthly transfers were reasonable remains a valid observation, it cannot be considered an imperative for continued action when considered against the discretion that flows from § 905.

Based on the foregoing, we conclude that § 905 does not require DOE and GSA to maintain a program of monthly transfers to the Fund. There is no specific statutory language that dictates a different conclusion. On the contrary, the vagueness of § 905's language confers on the agency substantial discretion to determine "when" during the fiscal year transfers are to be made. Moreover, in the absence of a statutorily declared "when", the argument that Congress could never have intended a single transfer at year's end does no more than beg the question of "when" Congress did intend the transfers to be made. Without a statutorily prescribed transfer time, a transfer on the last day of the fiscal year is as legally reasonable as a transfer at more frequent intervals during the year.

To preclude a reoccurrence of the events respecting transfers as well as to clarify the limitations language pertaining to unobligated fund balances, the following legislative changes are suggested in reporting to Congress:

1. Amend the language of §905, Pub. L. No. 98-525 by inserting after "deposited" where it first appears one of the following phrases "on a monthly basis", "on a quarterly basis", "on a semiannual basis", "annually", etc..

2. Amend 50 U.S.C. §98d(b) by:

A. Striking "or" before "(2)";

B. Inserting a comma in lieu of the period following "250,000,000; and

C. Adding "or (3) at any time the unobligated balance in the Defense Stockpile Transaction Fund exceeds \$250,000,000.

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B.

IS GSA's AUTHORITY TO BARTER LIMITED
BY AN UNOBLIGATED FUND BALANCE IN
EXCESS OF \$250 MILLION?

Chairman Bennett also questions the assertion of the Acting Administrator, GSA, that

"our disposal of stockpile material as payment for the Presidentially-directed ferroalloys upgrading program will continue even if the [\$250 million] limitation should be reached."^{9/}

We understand that the upgrading referred to is being accomplished by barter. Specifically, contractors performing the upgrading are paid with other materials rather than cash. In this regard, GSA also asserts:

"Since the limitation only applies to receipts deposited in the Transaction Fund, and no funds are generated when material is disposed of as payment for upgrading the ferroalloys, the limitation is inapplicable."

We agree. The language of 50 U.S.C. §98d(b)(2) precludes a disposal "that would result in there being an unobligated balance * * * in excess of \$250,000,000." Since we are not advised that any cash receipts are generated by GSA's use of barter transactions to upgrade its stocks of ferroalloys, it is not apparent how such a transaction would "result in there being", or otherwise affect, the unobligated balance in the Fund. Such barter could continue, then, even if the Fund's unobligated balance exceeds \$250 million.

If Chairman Bennett eventually decides that barter agreements are a significant problem requiring corrective legislation, we are available to assist him in that effort.

^{9/} Letter dated April 5, 1985 from the Acting Administrator, GSA, to Chairman, House Armed Services Committee.



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

June 24, 1985

B-216664

To the President of the Senate and the
Speaker of the House of Representatives

This letter reports a deferral of General Services Administration (GSA) budget authority that should have been, but was not, reported to the Congress by the President pursuant to the Impoundment Control Act of 1974.

Section 1015(a) of the Impoundment Control Act (2 U.S.C. § 686(a)) requires the Comptroller General to report to the Congress whenever he finds that the President, the Director of the Office of Management and Budget (OMB), the head of any department or agency of the United States, or any other officer or employee of the United States has ordered, permitted, or approved the establishment of a reserve or deferral of budget authority, and the President has failed to transmit a special message with respect to such reserve or deferral. This report is submitted in accordance with the requirement imposed by section 1015(a) and under that section has the same effect as if it were a deferral message transmitted by the President.

The deferral in question occurs in the National Defense Stockpile Transaction Fund. This fund was established by Congress in 1979 to provide for the acquisition of certain strategic and critical materials, in order to preclude the dependency of the United States upon foreign sources for supplies of such materials in times of national emergency. Generally, the moneys received from the sale of materials in the National Defense Stockpile are deposited into the Fund. These receipts are to remain in the Fund until appropriated by Congress for the acquisition of strategic and critical materials (and for transportation related to such acquisition). 50 U.S.C. § 98h (1982).

For fiscal year 1985, the Continuing Resolution (Pub. L. 98-473) incorporated a provision in the conference version of the Treasury, Postal Service and General Government Appropriations bill which provides that up to \$185 million, in addition to amounts previously appropriated (all to remain available until expended) may be obligated from amounts in the National Defense Stockpile Transaction Fund.

GAO/OGC-85-12

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The budget authority for this account is created only when the Congress appropriates the cash receipts (both earned and anticipated) deposited into the Fund, since these receipts must remain in the Fund (and hence are not available for expenditure) until appropriated. 50 U.S.C. 98h. The apportionment schedule for this account, dated November 7, 1984, indicates that a total of \$224 million in obligational authority (made up of an unobligated balance brought forward of \$39 million and the 1985 appropriation of \$185 million) was apportioned in full over the first two quarters of this fiscal year. According to GSA, the funds were apportioned in this manner to preserve maximum flexibility in making purchases, based upon acquisition priorities and current market conditions. GSA advised us that the Fund currently contains \$207.9 million in unobligated receipts.

Despite the availability of \$224 million in obligational authority and currently estimated unobligated receipts of \$207.9 million, GSA, according to figures it supplied, has obligated only \$9.2 million from the fund since October 1984 and has made virtually no acquisitions in the last 4 months. The primary reason GSA asserts for its failure to acquire strategic and critical materials since January 1985 is that it was advised at that time by the National Security Council (NSC) to refrain from making any acquisitions until a stockpile goals study, initiated by NSC in late 1983, is completed and the results are promulgated. GSA anticipates that, depending on the results of the study, the previously established acquisition goals may require revision. GSA feels it is more prudent to delay its acquisitions until then.

Notwithstanding the reasons that may support GSA's decision to refrain temporarily from further obligations of the fund's obligational authority, the conscious decision to cease making acquisitions of strategic and critical materials pending the completion and release of the NSC study constitutes a deferral which should be reported to Congress under the Impoundment Control Act.

According to section 1011 of the Impoundment Control Act (2 U.S.C. § 582), a "deferral of budget authority" includes:

"(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

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(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority
"

In the President's budget, OMB's practice has been to exclude receipts deposited in the Fund from budget totals. Rather than referring to these receipts as "budget authority", OMB calls them "offsetting collections." However, the fact that these funds do not appear under the "budget authority" heading in the President's budget does not mean that the Fund does not contain budget authority for purposes of reporting impoundments under the Impoundment Control Act. See B-211398, July 24, 1984. These receipts are not available until appropriated. In our view, to the extent that Congress has made the funds available for obligation in appropriation provisions, there is available budget authority in the Fund. The portion of this budget authority which could be obligated at present for acquisitions, but has not been (due to the decision to await the NSC study) is the subject of this deferral.

The stockpile acquisitions are made in accordance with an Annual Materials Plan (AMP), which is an annual list of acquisition and disposal actions for stockpile materials. The AMP is initiated by the Federal Emergency Management Agency (FEMA) and GSA, and is subsequently reviewed by an interagency AMP steering committee, NSC, and FEMA. Finally, the AMP is submitted to the House and Senate Armed Services Committees. No action is required on the part of these two committees in order for the acquisitions contained in the AMP to commence. 50 U.S.C. § 98h-2(b).

At present there are two AMP's from which acquisitions could be made. GSA advises us that there are acquisitions totalling about \$50 million which could still be made from the AMP submitted for fiscal 1984. There are acquisitions totalling \$120 million which are contained in the fiscal year 1985 AMP (submitted to the committees in February 1984). An AMP for fiscal year 1986 has not yet been submitted. Consequently, it appears that, if GSA were making acquisitions with the available obligational authority, it could purchase about \$170 million worth of materials for the stockpile. From the figures provided us by GSA, the Fund contains sufficient

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receipts at present to support these acquisitions.^{1/} Therefore, in the absence of any legal impediment to making these purchases, the approximate amount of obligational authority subject to this impoundment is at least \$170 million.

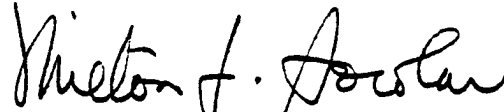
We considered and rejected the notion that GSA's decision not to make further acquisitions for the stockpile at least until release of the NSC study is a delay which is programmatic in nature, and hence not truly an impoundment. Obligation of this budget authority has been voluntarily halted. Completion of the NSC study is not a prerequisite, either legally or as a practical matter, to the continued execution of stockpile transactions. (If the cessation of acquisition were an absolute necessity pending completion of the NSC study, then it should have occurred at the time the study was started, early in fiscal year 1984, rather than just 4 months ago. However, in fiscal year 1984, approximately \$108,949,000 was obligated by GSA for stockpile acquisitions.)

Although proceeding with the previously planned acquisitions may not be the most expedient course of action from GSA's perspective (since the results of the study may require some adjustments to the stockpile's content), it is by no means an impossible course of action, as demonstrated by the acquisitions made in fiscal year 1984. Additionally, there is no certainty as to when the results of the NSC study will be released, and even less certainty as to when an AMP taking these results into account will be prepared, reviewed, and

^{1/} We are aware that the Administration has proposed legislation to repeal retroactively section 905 of the Department of Defense Authorization Act of 1985. Section 905 directs the deposit of 30 percent of all moneys accruing to the United States, during fiscal year 1985, from lands in the naval petroleum and oil shale reserves into the Stockpile Transaction Fund. If the proposed repeal were enacted, the Fund's other resources might be insufficient to support \$170 million in acquisitions. However, in the absence of such legislation, we regard these Naval Petroleum Reserve receipts as available for obligation and expenditure for stockpile purchases (to the extent authorized in the appropriation provision).

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submitted to the congressional committees. For these reasons, we conclude that the decision to refrain from making any acquisitions until such time constitutes a deferral reportable under the Impoundment Control Act.



Acting Comptroller General
of the United States